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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re AARON S. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHRISTINE D.,

Defendant and Appellant.

D045204

(Super. Ct. No. J510476A-C)

APPEAL from orders of the Superior Court of San Diego County, William E. Lehnhardt, Judge. (Retired Judge of the Imperial County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Christine D. appeals orders made at a contested Welfare and Institutions Code<sup>1</sup> section 366.21 six-month review hearing regarding her minor sons Aaron S., Alexander S. and Anthony S. (collectively minors). Christine contends: (1) the court erred in ordering Alexander and Aaron (the twins) remain in out-of-home placement because the evidence was insufficient to support a finding of detriment to them;<sup>2</sup> (2) the order suspending her educational decision-making rights on behalf of the minors was made without any evidentiary basis; and (3) she was not provided reasonable services and therefore her opportunity to reunify with her children was hampered. We affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

Christine has a lengthy history of child welfare referrals. In November 2003, Christine threw a board at 10-year-old Anthony, injuring his eye and fracturing his left orbital area. Christine was intoxicated and incoherent and she resisted arrest. She was arrested for public intoxication. Anthony and the nine-year-old twins were taken to Polinsky Children's Center.<sup>3</sup>

On December 4, 2003, the San Diego County Health and Human Services Agency (the Agency) filed petitions in the juvenile court alleging the minors came within the

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Christine sought return of the twins but not Anthony at the six-month review hearing.

<sup>3</sup> When the minors were brought to Polinsky Children's Center, there were no relatives available for placement. The minors' father, Anthony M., was believed to be living in Mexico but his actual whereabouts were unknown.

provisions of section 300. As to Anthony, the petition alleged Christine inflicted a non-accidental injury on him (§ 300, subd. (a)) and she was unable to provide regular care for him because of her alcohol abuse (§ 300, subd. (b)). As to the twins, the petitions alleged they came within the provisions of section 300, subdivisions (b) and (j) because they were at substantial risk of harm because of Christine's alcohol abuse and the injury she inflicted on Anthony.

The social worker assigned to the case interviewed the minors and Christine. Anthony reported his mother threw a board at him while she was intoxicated. Anthony also reported his mother beats him and the twins periodically and asks them to lie about it, and she is often drunk when they come home from school.

Alexander denied any abuse by his mother and denied ever seeing his mother consume alcohol. Aaron also denied being abused by his mother but later recanted, recalling a spanking incident.

Christine referred to Anthony as a " 'big liar.' " She denied any abuse and insisted Anthony threw the board at her, and it hit him when she deflected it. Christine said she had been experiencing behavior and school-related problems with Anthony since the previous summer. She denied having an alcohol problem, but admitted being previously ordered into SARMS.<sup>4</sup>

At the detention hearing, the court made a prima facie finding the allegations of the petition were true, ordered the minors detained in out-of-home care, ordered

supervised visitation between Christine and the twins, and no contact between Christine and Anthony until further order of the court. The court gave the social worker discretion to detain the minors with a relative or nonrelative extended family member (§ 362.7) upon the approval and concurrence of minors' counsel.<sup>5</sup>

At a contested jurisdiction and disposition hearing, the court sustained the allegations of the petitions, declared the minors dependents, removed their custody from Christine and ordered her to comply with a case plan. The case plan included individual counseling at least twice a month, participation in SARMS, a parenting education program, and a psychological evaluation.

At the time the six-month review report was written, Christine had made some progress in the recovery component of her case plan. She had maintained housing and full-time employment. Her participation in SARMS was good, and she was participating in three 12-step meetings per week. However, Christine had not yet completed a psychological examination, enrolled in a parenting education class, or attended counseling.<sup>6</sup> Because the minors could not be safely returned to Christine, the Agency recommended continued out-of-home care and further services for Christine.

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<sup>4</sup> SARMS is an acronym for Substance Abuse Recovery Management Systems, a San Diego County Juvenile Court drug treatment case management program.

<sup>5</sup> The jurisdiction/disposition report dated December 30, 2003, indicated the minors were detained in the home of paternal relatives, Mr. and Mrs. C.

<sup>6</sup> Christine attended counseling on two occasions with Dr. Richard J. Jordan, who terminated the sessions, concluding he was unable to engage her in psychotherapy because of her unwillingness to acknowledge, discuss or address any issues.

At the contested six-month review hearing, Christine sought return of the twins, but not Anthony, to her custody. Christine had completed a psychological evaluation but had yet to participate in a parenting class or individual therapy. The psychological evaluation showed Christine had difficulty planning, she was impulsive, and had low tolerance for frustration, thus making it difficult for her to parent her children without support. It also showed Christine did not always respond in a frank and honest manner, instead responding in an attempt to present herself in a good light. She was defensive, had little insight into her own motivations, and had little awareness of the effect her behavior had on others. Her traits showed risk factors for physical abuse. The examiner indicated that Christine had not accepted responsibility for her behavior. Because these qualities made it unlikely that Christine would be able to recognize how her choices and actions have contributed to Anthony's misbehavior and the events that led to her children being removed from her care, the examiner believed Christine had not made the changes necessary to ensure her children's safety if they were returned to her.

Social worker Herbert Mills testified the Agency had not brought the minors for visits with Christine on three occasions in August and one occasion in September. Mills conceded the six hours of lost visitation time was through no fault of Christine, but rather due to the Agency's change and reduction in staff and resulting mix-ups. Mills testified the Agency intended to extend the amount of time on future visits to make up for the lost visits.

Mills further testified Christine had neither taken any responsibility for the injuries to Anthony nor admitted she presently had a problem with alcohol. Given the results of

the psychological evaluation and Christine's overall lack of progress with her case plan, Mills recommended Christine's visits with the minors remain supervised.

The court found the Agency had offered reasonable services, specifically indicating the missed visits did not constitute a lack of reasonable services. The court further found returning the twins to Christine would create a substantial risk of detriment to their physical and emotional well-being, and therefore continued their out-of-home placement. The court gave the social worker the discretion to permit Christine unsupervised visits with the minors with concurrence of minors' counsel. The court suspended Christine's rights to make educational decisions for the minors.

## DISCUSSION

### I. Sufficiency of Evidence to Support a Finding of Detriment

Christine contends the court should have returned the twins to her custody. She argues there was insufficient evidence to support a finding the twins would be at substantial risk of physical or emotional detriment if returned to her. In support of her position Christine asserts (1) the principal reason for dependency jurisdiction, her excessive use of alcohol, has been adequately addressed; (2) "total compliance with the reunification plan is not mandatory to achieve return of a child to parental custody"; and (3) in declining to return the twins to her, the court improperly disregarded their wishes.

#### *A. General Legal Principles*

In reviewing the sufficiency of the evidence, we look to the entire record for substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of the witnesses, attempt to resolve conflicts in the evidence, or determine

where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order, even if there is other evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Although Christine showed she had made progress in her recovery by participating in SARMS and a 12-step program, and completing a psychological evaluation by the time of the hearing, she had yet to participate in a parenting class or individual counseling, both of which are critical aspects of her case plan for reunification. Christine indicated she did not need counseling and had no problems with the twins.<sup>7</sup> Further, she had taken no responsibility for the injuries to Anthony, did not understand how her actions affected the twins, and did not admit she had a problem with alcohol. Substantial evidence supports the court's finding the twins would be at substantial risk of detriment if returned to Christine.

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<sup>7</sup> At the contested six-month hearing, when Christine was asked whether she objected to participating in individual therapy she responded, "I am not sad or depressed. Nothing is wrong, except the missing of my children in my life. I don't see what is the necessity of [individual counseling]. I think the reason I am here is because we have a

### B. Christine's Alcohol Problem

Christine contends the principal reason for dependency jurisdiction, her excessive use of alcohol, has been adequately addressed to warrant returning the twins to her custody. We disagree. "[D]eciding whether to return a dependent child to parental custody is not governed 'solely by whether the parent has corrected the problem that required court intervention . . . .' " (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1140 [despite parent's completion of reunification plan, court found return of minor would nonetheless detrimentally impact minor's emotional well-being].) Although Christine has addressed her alcohol problem by maintaining sobriety and participating in a 12-step program and SARMS, there were other factors that led to intervention. The record shows Christine lacks insight into her problems<sup>8</sup> and has taken no responsibility for Anthony's injuries, instead blaming Anthony. Christine has not been amenable to therapy, refusing to discuss issues and believing the problem only related to Anthony. Both the social worker and psychological evaluator believed the twins could not safely be returned to Christine. The court was entitled to find these expert opinions credible and give great weight to their assessments. We cannot reweigh the evidence or substitute our judgment for that of the trial court. (See *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 52.) Thus, the

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problem that needs to be addressed and it should be addressed with [Anthony] and we should work on that."

<sup>8</sup> When Dr. Jordan terminated counseling with Christine following two sessions, he indicated that Christine seemed to have no insight as to her part in creating the challenges in her life, and was unwilling to recognize or accept any responsibility for her life situation, totally blaming her conflicts with Anthony on him.



evidence supports a finding Christine has not sufficiently ameliorated the conditions giving rise to the court's jurisdiction.

### *C. Compliance with Reunification Plan*

Christine contends total compliance with the reunification plan is not required to defeat a presumption of detriment and achieve return of a child to parental custody.

As applied to both six-month and twelve-month review hearings, "[t]he failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return [of the minors] would be detrimental." (§ 366.21, subds. (e) & (f).) " 'In determining whether it would be detrimental to return the child . . . the court must consider whether the parent participated regularly in any treatment program set forth by the plan, the "efforts or progress" of the parent, and the "extent" to which the parent "cooperated and availed himself or herself of services provided." ' [Citation.]" (*Jennifer A. v. Superior Court*, (2004) 117 Cal.App.4th 1322, 1341 [compliance with the reunification plan, although not determinative, is a pertinent consideration at an 18-month hearing].) Compliance with a reunification plan need not be the sole concern of the court, as long as it is an indication of progress toward family preservation. (*In re Dustin R.*, *supra*, 54 Cal.App.4th at pp. 1139-1140 [mother's compliance with reunification plan did not ameliorate causes requiring placement in long-term foster care].) Here, although Christine has made some effort to comply with her case plan, she has not complied with the plan to a degree sufficient to eliminate the risk of detriment to the twins.

#### D. *Twins' Wishes*

Christine contends the court improperly disregarded the wishes of the twins, who wanted to return to her care. Relying on *In re David H.* (1995) 33 Cal.App.4th 368, Christine asserts children have a constitutionally-protected right to preserve their family.

The Agency argues Christine lacks standing to raise this claim because a parent cannot assert the interests of the children when the children themselves have not complained. We disagree.

Generally, a parent who is an aggrieved party may appeal a judgment in a juvenile dependency matter. (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 948.) "To be aggrieved, a party must have a legally cognizable interest that is injuriously affected by the court's decision." (*Ibid.*) Further, "[w]here the interests of two parties interweave, either party has standing to litigate issues that have a[n] impact upon the related interests. This is a matter of first party standing." (*In re Patricia E.* (1985) 174 Cal.App.3d 1, 6, disapproved on other grounds in *In re Celine R.* (2003) 31 Cal.4th 45, 60; *In re Caitlin B.* (2000) 78 Cal.App.4th 1190, 1193.)

Here, Christine is an aggrieved party and her interests intertwine with those of the twins. The court was entitled to consider the twins' wishes in deciding whether it was in their best interests to return them to Christine. Thus, Christine has standing to raise an issue that affects her interest in maintaining the parent-child relationship.

A minor's wishes are not the overriding factor in deciding whether return to parental custody is warranted. Here, the court considered the twins' stipulated testimony they would like to return to Christine. However, the court was not required to follow

those wishes, but instead to act in the twins' best interests. In the context of juvenile dependency proceedings, acting in the best interests of the child is always the court's paramount concern. (See *In re Lauren P.* (1996) 44 Cal.App.4th 763, 769; see also *In re J.C.* (2002) 104 Cal.App.4th 984, 992-993.) A minor's preferences or wishes are not determinative of his or her best interests. (See, e.g., *In re Melissa S.* (1986) 179 Cal.App.3d 1046, 1058 [minor's wishes to return to mother's custody not necessarily determinative]; but see *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087 [court found ample evidence, including minor's repeated testimony he wanted to live with his mother, to support a finding that returning minor to mother was in minor's best interest].) Because there was ample evidence of detriment to the twins if they were returned to Christine's custody, the court could reasonably find returning the twins to Christine despite their wishes was not in their best interests.

## II. Order Suspending Educational Rights

Christine contends the court's order suspending her right to make educational decisions was made without any evidentiary basis. The Agency contends Christine has forfeited her right to object to the suspension of her educational decision-making rights on appeal by failing to object in the juvenile court. Christine argues she is challenging the sufficiency of the evidence on appeal, which is not subject to the waiver or forfeiture doctrine.

### A. Forfeiture

"[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court." (*In re S.B.* (2004) 32

Cal.4th 1287, 1293.) The so-called "forfeiture" doctrine applies in juvenile dependency proceedings. (*Ibid*; see also *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502.) "In both adult and juvenile cases, the time to object is at the pertinent hearing, not for the first time on appeal." (*In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 971, citing *People v. Welch* (1993) 5 Cal.4th 228, 237.) A different rule would permit a party to "deliberately stand by in silence and thereby [allow] the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable." (*In re Dakota S.*, at p. 502.)

Here, the social worker's six-month review report included the recommendation to suspend Christine's educational decision-making rights on behalf of the minors. The report put Christine on notice of the social worker's recommendation. At the hearing, Christine objected to supervised visitation and to the reasonableness of her services as to all three minors, yet she failed to object to the court's suspension of her educational decision-making rights. Christine is not challenging the sufficiency of the evidence, but rather a discretionary decision by the trial court. By failing to object, Christine has forfeited her right to raise this issue on appeal.

#### B. *General Legal Principles*

Even had Christine objected, the court did not abuse its discretion by suspending her educational decision-making rights. Section 361 allows the juvenile court to suspend a parent's right to make educational decisions for his or her child. Section 361, subdivision (a) states: "In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and

shall by its order clearly and specifically set forth those limitations. Any limitation to the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child."

Here, the court suspended Christine's right to make educational decisions on behalf of the minors based upon the social worker's recommendation. The evidence showed Christine's ability to make educational decisions for the minors and to be an effective advocate for their educational interests is compromised by her failure to address and rectify the problems that resulted in the minors being dependents in the first place. As we previously discussed, Christine had little insight into her own behavior and little motivation to change. She took no responsibility for the twins' removal from her care. Her visits with them remained supervised. Under these circumstances, the court could reasonably find Christine was not capable of making educational decisions for the twins. In any event, the juvenile court did not permanently terminate Christine's right to make educational decisions on the minors' behalf. Thus, the order did not exceed what was necessary to protect the minors.

### III. Reasonable Services

Christine challenges the court's finding she received reasonable services. She contends because the Agency failed to bring the minors to four visits, her opportunity to reunify with them was hampered. Christine further contends the Agency's offer to lengthen future visits to make up the month of lost visits does not adequately rectify the problem. Instead, Christine maintains the only reasonable "quid pro quo" would be to

extend her reunification services for a month should she need the extra time to reunify with the minors.

#### A. *General Legal Principles*

In determining the sufficiency of reunification services, the role of the appellate court is to decide "whether the record discloses substantial evidence which supports the juvenile court's findings that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) A service plan must take into account the specific needs of the family. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The standard is not that the *best* possible services were provided, but that *reasonable* services were provided under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) The appellant has the burden to show the evidence is insufficient to support the court's reasonable services finding. (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 947.)

Although Christine did not receive perfect services, the services were reasonable under the circumstances. Christine was provided with weekly visitation, with the exception of four occasions when visits did not take place as scheduled due to lack of the Agency's staffing and logistics. Although Christine played no role in the four missed visits, this fact does not translate into the Agency's failure overall to provide reasonable services. The Agency intended to make arrangements to extend the amount of time during future visits, an accommodation that is fair and feasible. As the court expressly

found, the minimal and unintentional failure of the Agency to produce the minors on four occasions did not constitute unreasonable services.<sup>9</sup>

DISPOSITION

The orders are affirmed.

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McCONNELL, P. J.

WE CONCUR:

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HUFFMAN, J.

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AARON, J.

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<sup>9</sup> Having concluded services were reasonable, we need not address Christine's request to extend services in the future.